

1984 WL 250021 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 12, 1984

*1 Wesley L. Brown, Esquire
County Attorney
Saint-Amand, Thompson & Brown
210 South Limestone Street
First Piedmont Federal Building
Gaffney, South Carolina 29340

Dear Mr. Brown:

You have requested the advice of this office as to what fees should be collected by Clerks of Court for judicial sales. As you suggested, this matter appears to be controlled by [§ 15-39-770 of the Code of Laws of South Carolina \(1976\)](#) which sets the compensation for officers making sales of real estate. See Ops. Atty Gen. (July 31, 1979). [Section 14-11-310\(4\) of the Code](#), as amended should not apply to sales by Clerks of Court because that statute refers only to collections by masters. Sutherland Statutory Construction, Vol 2A § 46.01 et seq. (4th Ed.). See § 15-39-630; see also § 23-19-10.

You also questioned whether [§ 15-39-770](#) would apply to purchases of judicial sale property by the mortgagee thereof. Although a previous opinion of this office concluded that such a purchase was not subject to the payment of a fee to the master, this conclusion was based upon special language in the masters' fee statute regarding the passing of money. 1976 Ops. Atty. Gen. #4516; [§ 14-11-310](#). No such language is present in [§ 15-39-770](#) which assesses the fee for services rendered in making the sale as well as for paying over the proceeds. This language indicates that the fee should not be restricted to sales involving the passing of money through the hands of the Clerks of Court. See 47 Am.Jur.2d Judicial Sales § 80. Therefore, [§ 15-39-770](#) appears to require a fee to be paid for the purchase of property by mortgagees at judicial sales conducted by Clerks of Court.

If we may be of other assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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